

REMARKS

Applicants respectfully request further examination and reconsideration in view of the above amendments and the comments set forth fully below. Claims 27-30, 35-38, 40, 42 and 44-46 were pending. Within the previous Office Action, Claims 27-30, 35-38, 40, 42 and 44-46 have been rejected. By the above amendments, Claims 45 and 46 have been amended and new Claims 47 and 48 have been added. Accordingly, Claims 27-30, 35-38, 40, 42 and 44-48 are now pending.

Rejections Under 35 U.S.C. § 102

Within the Office Action, Claims 27-30, 35-38, 40, 42 and 44-46 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,368,823 to McGraw et al. (hereinafter "McGraw"). The applicants respectfully disagree. McGraw teaches automated synthesis of oligonucleotides. McGraw teaches that columns 11 are formed into a carrier plate 8 or built to fit within Luer fittings. McGraw does not teach a vial comprising a bored interior having a consistent dimension to hold a frit for retaining material within the vial directly above the frit and maintaining a consistent flow through the bored interior during a flushing procedure.

A close-up view of the reaction column 11 taught by McGraw is shown in Figure 2. [McGraw, col. 5, lines 49-52, Figure 2] McGraw teaches that a Luer fitting 15 is fitted into a bulkhead 16. [McGraw, col. 5, lines 45-52, Figures 5 and 6] McGraw then teaches that the column 11 is inserted into the Luer fitting 15. [McGraw, col. 5, lines 51-52, Figures 5 and 6] McGraw does not teach that the column 11 is fitted directly into a bulkhead 16. Accordingly, McGraw does not teach that a pressure-tight seal is provided directly between the column 11 and the bulkhead 16. In contrast, McGraw teaches that the column is inserted into the Luer fitting 15, which has previously been inserted into the bulkhead 16.

McGraw also teaches that the support 100 is placed on the frit 9 and a second frit 9A is located over the support 100. [McGraw, col. 5, lines 52-55, Figure 6] Thus, McGraw does not teach that the solid support is retained within the column directly above the frit. In contrast, McGraw teaches the support 100 is positioned between the frit 9 and the frit 9A. Furthermore, McGraw does not teach using a single frit; rather two frits, 9 and 9A, are required. [McGraw, Figure 6] Every term of a claim must be afforded meaning, and the term "single" in Claims 45

and 46 would have no meaning if prior art with two frits equaled something that only has a “single” frit. Further, per the Examiner’s suggestion, the term “comprising” has been replaced in Claims 45 and 46 with the term “including.”

Within the Office Action, it is stated that in Claim 27, the phrase “for retaining material within the vial directly above the frit. . . ‘ is not given patentable weight.” The applicants respectfully disagree. According to MPEP 2111.02, “[i]ntended use recitations and other types of functional language cannot be entirely disregarded.” The MPEP further states that in an apparatus claim, the intended use must result in a structural difference between the claimed invention and the prior art. That is exactly the situation here, where the structural difference is a vial comprising a bored interior having a consistent dimension to hold a frit for retaining material within the vial “directly above the frit” as opposed to retaining material within the vial somewhere else. The portion of the phrase which includes “directly” within Claim 27 ignores the key part of the phrase “directly above the frit.” This is a positional limitation and there is no legal reason why this positional limitation should not be given patentable weight. To not do so is clear error. This positional limitation specifies that the material is retained within the vial *directly above the frit*.

It is further stated within the Office Action that even if given patentable weight, McGraw still meets the claim since McGraw shows a vial having a support between two frits. As discussed above, in contrast to this positional limitation, McGraw teaches that the support 100 is positioned between the frit 9 and the frit 9A, not “directly above the frit.” McGraw teaches the necessity of two frits and that pressure must be equalized above and below the frits. [McGraw, col. 13, line 9 - col. 19, line 41; Figures 9b, 9c, 10b; Steps 261, 258H, 313 respectively] Furthermore, McGraw specifies that the support is positioned between the frits not necessarily above or below one of them. [McGraw, Figure 6]

Also within the Office Action, it is stated that the McGraw reference shows the Luer fitting as a part of the bulkhead 16 since Figure 5 shows the Luer fitting extending through the bulkhead. The applicants respectfully disagree. McGraw does not teach that the vial is directly placed into the bulkhead 16. With respect to Figure 5, McGraw teaches

[t]he bulkhead 16 is sealed to the top of the solid frame 17' by means of the seal 95 such that the exit basin 17 is not connected to the atmosphere in the reaction chamber 10 except through the *Luer fittings 15 which receive the reaction columns 11*. [McGraw, col. 5, lines 44-48, Figure 5, emphasis added]

With respect to Figure 6, McGraw teaches “[t]he column 11 has a conically-shaped outlet end *for insertion into a mating Luer fitting 15*. [McGraw, col. 5, lines 51-52, Figure 6, emphasis added.] It is an error to view the Luer fitting 15 and the bulkhead 16 as one entity. As is well known in the art or can be discovered by quickly searching Google, Luer fittings 15 are a completely independent component, separate from the bulkhead 16. Although Figure 5 shows the Luer fitting 15 extending through the bulkhead 16, that does not make the two components one. The Luer fitting 15 is inserted into the bulkhead 16, just like the column 11 is inserted into the Luer fitting 15. Therefore, McGraw teaches a column 11 being inserted into a Luer fitting 15 which is connected to a bulkhead 16. Thus, there is no direct contact between the column 11 and the bulkhead 16. Accordingly, McGraw does not teach that a pressure-tight seal is provided *directly* between the column and a cartridge, since for a seal to be *directly* between the column 11 and cartridge 16 there could be nothing in between; however here the Luer fittings 15 are in between the column 11 and the bulkhead 16. McGraw clearly teaches that a Luer fitting 15 is positioned between the column 11 and the bulkhead 16.

In contrast to the teachings of McGraw, the vial of the present invention includes a support held within the vial directly above a frit. [Present Specification, page 3, lines 24-25] The interior of each vial is precision bored to ensure a tight consistent seal with the corresponding frit. [Present Specification, page 3, lines 25-27] The vials are held within a cartridge. [Present Specification, page 3, lines 15-16] The exterior of each vial also has a precise dimension to consistently fit within the cartridge and provide a pressure tight seal around each vial *directly* within the cartridge. [Present Specification, page 3, line 27 - page 4, line 2] As discussed above, McGraw does not teach that a pressure-tight seal is provided directly between the column and a cartridge. In contrast, McGraw teaches that the column is inserted into the Luer fitting 15, which has previously been inserted into the bulkhead 16. As further discussed above, McGraw does not teach that a solid support is retained within the vial directly above a frit. In contrast, McGraw teaches that the support 100 is positioned between the frit 9 and the frit 9A.

The independent Claim 27 is directed to a vial comprising a bored interior having a consistent dimension to hold a frit for retaining material within the vial *directly* above the frit and maintain a consistent flow through the bored interior during a flushing procedure by only forming a pressure differential to expel material from the vial and a solid support retained within the vial above the frit after the flushing procedure. As discussed above, McGraw does not teach

that a solid support is retained within the vial *directly* above a frit. In contrast, McGraw teaches that the support 100 is positioned between the frit 9 and the frit 9A. For at least these reasons, the independent Claim 27 is allowable over the teachings of McGraw.

Claim 28 is dependent on the independent Claim 27 and adds a further limitation specifying that the vial comprises an exterior dimension to fit within a receiving hole of a cartridge, thereby providing a pressure-tight seal *directly* between the vial and the cartridge. As discussed above, McGraw does not teach that a pressure-tight seal is provided *directly* between a vial and a cartridge. In contrast, McGraw teaches that the column is inserted into the Luer fitting 15, which has previously been inserted into the bulkhead 16. Thus, it is clear from the teachings of McGraw that a pressure-tight seal is not provided *directly* between the column 11 and the bulkhead 16, but that the Luer fitting 15 is positioned between the column 11 and the bulkhead 16. For at least these reasons, the Claim 28 is allowable over the teachings of McGraw.

Claims 28 and 40 are both dependent on the independent Claim 27. As described above, the independent Claim 27 is allowable over the teachings of McGraw. Accordingly, the Claims 28 and 40 are both also allowable as being dependent on an allowable base claim.

The independent Claim 29 is directed to a vial comprising an exterior dimension to fit within a receiving hole of a cartridge thereby providing a pressure-tight seal *directly* between the vial and the cartridge, a bored interior having a consistent dimension to maintain a consistent flow through the bored interior during flushing procedures by only forming a pressure differential to expel material from the vial and a solid support retained within the vial above the frit after flushing procedures. As discussed above, McGraw does not teach that a pressure-tight seal is provided *directly* between the column and a cartridge. In contrast, McGraw teaches that the column is inserted into the Luer fitting 15, which has previously been inserted into the bulkhead 16. Thus, it is clear from the teachings of McGraw that a pressure-tight seal is not provided *directly* between the column 11 and the bulkhead 16, but that the Luer fitting 15 is positioned between the column 11 and the bulkhead 16. As further discussed above, McGraw does not teach that a solid support is retained within the vial above a frit. In contrast, McGraw teaches that the support 100 is positioned between the frit 9 and the frit 9A. McGraw also does not teach that a vial includes a bored interior having a consistent dimension to maintain a consistent flow through the bored interior. For at least these reasons, the independent Claim 29 is allowable over the teachings of McGraw.

Claims 30 and 42 are both dependent on the independent Claim 29. As described above, the independent Claim 29 is allowable over the teachings of McGraw. Accordingly, the Claims 30 and 42 are both also allowable as being dependent on an allowable base claim.

The independent Claim 35 is directed to a vial. The vial of Claim 35 comprises a bored interior having a consistent dimension to hold a frit for retaining material above the frit and maintain a consistent flow through the bored interior during a flushing procedure by only forming a pressure differential to expel material from the vial, a top opening through which material is dispensed into the bored interior, a bottom opening of a diameter to retain material within the bored interior when no pressure differential is applied and through which material is flushed during the flushing procedure, an exterior dimension to form a pressure-tight seal *directly* between the vial and a cartridge when the vial is inserted into a receiving hole of the cartridge and a solid support retained within the vial above the frit after the flushing procedure. As discussed above, McGraw does not teach that a pressure-tight seal is provided *directly* between a vial and a cartridge. In contrast, McGraw teaches that the column is inserted into the Luer fitting 15, which has previously been inserted into the bulkhead 16. Thus, it is clear from the teachings of McGraw that a pressure-tight seal is not provided *directly* between the column 11 and the bulkhead 16, but that the Luer fitting 15 is positioned between the column 11 and the bulkhead 16. As further discussed above, McGraw does not teach that a solid support is retained within the vial above a frit. In contrast, McGraw teaches that the support 100 is positioned between the frit 9 and the frit 9A. McGraw also does not teach that a vial includes a bored interior having a consistent dimension to maintain a consistent flow through the bored interior. For at least these reasons, the independent Claim 35 is allowable over the teachings of McGraw.

Claim 44 is dependent on the independent Claim 35. As described above, the independent Claim 35 is allowable over the teachings of McGraw. Accordingly, the Claim 44 is also allowable as being dependent on an allowable base claim.

The independent Claim 36 is directed to a vial. The vial of Claim 36 comprises a frit, a solid support, a bored interior having a consistent dimension to hold the frit for retaining the solid support above the frit and maintain a consistent flow through the bored interior during a flushing procedure by only forming a pressure differential to expel material from the vial, wherein the solid support and material formed on the solid support is retained above the frit, within the vial, during a flushing procedure, a top opening through which material is dispensed into the bored interior, a bottom opening of a diameter to retain material within the bored interior when no pressure differential is applied and through which material is flushed during the flushing

procedure and an exterior dimension configured to form a pressure-tight seal *directly* between the vial and a cartridge when the vial is inserted into a receiving hole of the cartridge. As discussed above, McGraw does not teach that a pressure-tight seal is provided *directly* between a vial and a cartridge. In contrast, McGraw teaches that the column is inserted into the Luer fitting 15, which has previously been inserted into the bulkhead 16. Thus, it is clear from the teachings of McGraw that a pressure-tight seal is not provided *directly* between the column 11 and the bulkhead 16, but that the Luer fitting 15 is positioned between the column 11 and the bulkhead 16. As further discussed above, McGraw does not teach that a solid support is retained within the vial above a frit. In contrast, McGraw teaches that the support 100 is positioned between the frit 9 and the frit 9A. McGraw also does not teach that a vial includes a bored interior having a consistent dimension to maintain a consistent flow through the bored interior. For at least these reasons, the independent Claim 36 is allowable over the teachings of McGraw.

Claims 37 and 38 are both dependent on the independent Claim 36. As described above, the independent Claim 36 is allowable over the teachings of McGraw. Accordingly, the Claims 37 and 38 are both also allowable as being dependent on an allowable base claim.

The independent Claim 45 is directed to a vial including a bored interior having a consistent dimension to hold a single frit for retaining material within the vial *directly* above the single frit and maintain a consistent flow through the bored interior during a flushing procedure by only forming a pressure differential to expel material from the vial and a solid support retained within the vial above the single frit after the flushing procedure. As discussed above, McGraw does not teach that a solid support is retained within the vial *directly* above a *single* frit. In contrast, McGraw teaches that the support 100 is positioned between the frit 9 and the frit 9A. Further, McGraw does not teach a vial holding a *single* frit. McGraw teaches the frit 9 and the frit 9A. For at least these reasons, the independent Claim 45 is allowable over the teachings of McGraw.

The independent Claim 46 is directed to a vial including an exterior dimension to fit within a receiving hole of a cartridge thereby providing a pressure-tight seal *directly* between the vial and the cartridge, a bored interior having a consistent dimension to maintain a consistent flow through the bored interior during flushing procedures by only forming a pressure differential to expel material from the vial and a solid support retained within the vial above the single frit after flushing procedures. As discussed above, McGraw does not teach that a pressure-tight seal is provided *directly* between the column and a cartridge. In contrast, McGraw teaches that the column is inserted into the Luer fitting 15, which has previously been inserted into the bulkhead

16. Thus, it is clear from the teachings of McGraw that a pressure-tight seal is not provided *directly* between the column 11 and the bulkhead 16, but that the Luer fitting 15 is positioned between the column 11 and the bulkhead 16. As further discussed above, McGraw does not teach that a solid support is retained within the vial above a *single* frit. In contrast, McGraw teaches that the support 100 is positioned between the frit 9 and the frit 9A. McGraw also does not teach that a vial includes a bored interior having a consistent dimension to maintain a consistent flow through the bored interior. Further, McGraw does not teach a solid support retained within the vial directly above a *single* frit. McGraw teaches the frit 9 and the frit 9A. For at least these reasons, the independent Claim 46 is allowable over the teachings of McGraw.

New Claims

The new independent Claim 47 is directed to a vial. The vial of Claim 47 comprises a bored interior having a consistent dimension, a material for growing a polymer chain and a frit for retaining the material within the vial directly above the frit and maintain a consistent flow through the bored interior during a flushing procedure by only forming a pressure differential to expel material from the vial and a solid support retained within the vial above the frit after the flushing procedure. As discussed above, McGraw does not teach that a solid support is retained within the vial *directly* above a frit. In contrast, McGraw teaches that the support 100 is positioned between the frit 9 and the frit 9A. McGraw also does not teach that a vial includes a bored interior having a consistent dimension to maintain a consistent flow through the bored interior. For at least these reasons, the independent Claim 47 is allowable over the teachings of McGraw.

The new independent Claim 48 is directed to a vial. The vial of Claim 48 comprises a bored interior having a consistent dimension to hold a single frit for retaining material within the vial directly above the single frit without any additional frits and maintain a consistent flow through the bored interior during a flushing procedure by only forming a pressure differential to expel material from the vial and a solid support retained within the vial above the single frit after the flushing procedure. As discussed above, McGraw does not teach a *single* frit *without any additional frits*. McGraw also does not teach that a solid support is retained within the vial above a single frit. In contrast, McGraw teaches that the support 100 is positioned between the frit 9 and the frit 9A. McGraw also does not teach that a vial includes a bored interior having a consistent dimension to maintain a consistent flow through the bored interior. For at least these reasons, the independent Claim 48 is allowable over the teachings of McGraw.

Attorney Docket No.: PATENT
NEI-00104

Applicants respectfully submit that the claims, as amended, are now in a condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, they are encouraged to call the undersigned at (408) 530-9700 to discuss the same so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,
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Dated: January 3, 2006

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CERTIFICATE OF MAILING (37 CFR § 1.8(a))

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